



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 4188-99
13 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show entitlement to reserve retirement.

2. The Board, consisting of Mr. Leeman, Mr. Dunn and Mr. Mazza, reviewed Petitioner's allegations of error and injustice on 6 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was honorably discharged on 28 April 1989 at the expiration of a six year enlistment in the Regular Navy. At that time, he had completed about 12 years of active service and nine years of qualifying service in the Naval Reserve. A statement of service for naval reserve retirement shows that he had been credited with 21 years, 10 months and 22 days of qualifying service. However, he is not eligible for any retirement because he has not completed 20 years of active service and the last six years of qualifying service were not served in the reserve component. The six year requirement is now scheduled to revert to eight years on 1 October 2001.

d. Petitioner reenlisted in the Naval Reserve for four years on 15 May 1989 and subsequently reenlisted for five years.

However, this service was in the Individual Ready Reserve (IRR) and he did not earn any additional qualifying years.

e. Petitioner applied to the Board in 1998 requesting that the record be corrected to show entitlement to reserve retirement. He stated that he had no idea that the last six qualifying years must be in the reserve component and that if he had known he would have earned qualifying years. On 15 September 1998, the Board denied his request for corrective action. The letter informing him of the denial states, in part, as follows:

In reaching its decision, the Board noted that you were born 30 May 1942 and are not 56 years old. Therefore, you have not reached retirement age and an injustice does not exist until you are denied retirement benefits at age 60. In addition, the Board believed that you should have known that the last eight years had to be qualifying years in the reserve component.

However, the Board also noted that your current enlistment does not expire until 14 November 1998 and you are apparently eligible to reenlist. Therefore, you can continue to serve in the Naval Reserve and return to a drilling status, or complete correspondence courses, and earn about four qualifying years before you reach age 60. The Board believed that, although it cannot be guaranteed, a future Board might consider that you have made a reasonable effort to qualify for retirement and correct the record to give you additional qualifying years.

Given the circumstances, the Board concluded that corrective action is not warranted at this time.

f. Petitioner has now submitted evidence showing that he has severe health problems and is not eligible to reenlist. Therefore, he cannot earn any additional qualifying years. Based on this evidence his case has been reconsidered.

g. As previously noted, Petitioner reenlisted in the Naval Reserve on 15 November 1993 for five years. Accordingly, his enlistment expired on 14 November 1998. The documentation showing discharge on that date is not filed in his service record. Petitioner cannot be transferred to the Retired Reserve if he has been discharged.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable

action. The Board notes that he has earned over 21 years of qualifying service but is not eligible for any retirement. Although he should have know about the reserve service requirement, the Board believes that if he had known, he would have earned the required qualifying years. Since he cannot now earn additional qualifying years, the Board concludes that corrective action to establish eligibility for retired pay at age 60 is now warranted.

Therefore, the record should be corrected to show that Petitioner reenlisted in the Naval Reserve for six years on 29 April 1983 and continued on active duty, instead of the six year enlistment in the Regular Navy now of record. With this correction, he will have the last eight years of qualifying service in the reserve component.

Since Petitioner's enlistment has expired, he cannot be transferred to the Retired Reserve. Therefore, given the provisions of the Uniform Retirement Date Act, the record should be further corrected to show that he transferred to the Retired Reserve on 1 November 1998 vice being discharged on 14 November 1998 or any other date.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he reenlisted in the Naval Reserve on 29 April 1983 for six years, vice the six year enlistment in the Regular Navy of that date.

b. That Petitioner's naval record be further corrected to show that he transferred to the Retired Reserve on 1 November 1998 vice being discharged on 14 November 1998 or any other date.

c. That this Report of Proceedings be filed in Petitioner's naval record.

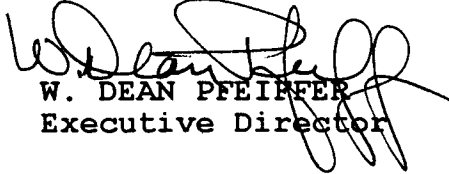
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director